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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,851	10/29/2003	Terrance N. Durdon	2077-41	6267
23477	7590	03/28/2005	EXAMINER	
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			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 03/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,851

Applicant(s)

DURDON, TERRANCE N.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10-29-03</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the stiffening ribs and the cover portion and rim portion lying "substantially in the same plane" must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 5. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement

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drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "31" has been used to designate both the tab and the centerline of the sealing member. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because the cross hatching of figure 5 depicts a rubber material. See MPEP 608.02. Additionally, the lead line of reference character 12 is pointing to a portion of the lid and not the cup rim as set forth in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from

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the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following informalities: "closed" should be replaced by -- closing -- at page 10, line 8. Appropriate correction is required.

Claim Objections

6. Claims 1 and 5 are objected to because of the following informalities: in claim 1, line 10, "closed should be replaced by -- closing -- and in claim 5, line 1, a space should be inserted after "claim". Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation " said extrusion grain " in line 4. There is insufficient antecedent basis for this limitation in the claim since each of the recited elements have an extrusion grain and the claim does not set forth the extrusion grain of each element is parallel to the others.

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Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4,6,7, and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Melton (US 6,314,866).

The lid illustrated in figure 27 discloses a cover portion having a drinking access port 837 and a condiment opening defined therein, the condiment opening being substantially opposite (to the degree set forth in the claims) from the drinking access port; a rim portion 822 around the periphery of the cover portion, and sealingly securable to the upper end of the drinking cup; and a flexible arm integrally formed with the rim portion and extending outwardly therefrom, the flexible arm having a sealing member 850 at an end remote from the rim portion for sealably closing the condiment opening when the condiment opening is not in use.

See column 17, line 24 with respect to a tab on the sealing member.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melton in view of Prueher (US 4,350,260).

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Melton teaches the claimed cup lid except for the hanging chad defining the drinking access port.

Prueher teaches it is known to provide an opening in a cup lid, the opening formed by dislocating a hanging chad.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hanging chad to the cup lid of Melton. Doing so is an obvious substitution of equivalent structure known in the art for drinking openings in cup lids.

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melton in view of Kenihan (US 6,708,735).

Melton teaches the claimed cup lid except for the stiffening ribs around the periphery of the condiment opening.

Kenihan teaches a cup lid having stiffening ribs 24 around the periphery of the condiment opening 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of stiffening ribs around the periphery of the condiment opening of Melton. Doing so provides stiffening to the weakened area in the cover portion formed by the opening.

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Melton.

Wherein Melton is silent regarding the extrusion grain of the cup lid, it is well known in the art that an extruded lid has an extrusion grain. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cup lid of Melton with the flexible arm having a longitudinal axis which is substantially aligned with the extrusion grain of the cover, rim portion and flexible arm.

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14. Claims 1,3,6,10, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over figure 34 of Melton in view of Figure 27 of Melton.

Figure 34 of Melton teaches the claimed cup lid including the cup lid being flat such that said cover portion and said rim portion lie substantially in the same plane, except for a cover for covering the condiment opening and flexible arm attaching the cover to the cup lid rim.

The cup lid illustrated in figure 27 teaches a cover for the condiment opening and flexible arm attaching the cover to the cup lid rim.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a cover for covering the condiment opening and flexible arm attaching the cover to the cup lid rim to the lid illustrated in figure 34. Doing so would provide a cover for the container opening to prevent spills and heat exchange between the container contents and the atmosphere.

Wherein Melton is silent regarding the extrusion grain of the cup lid, it is well known in the art that an extruded lid has an extrusion grain. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cup lid of Melton with the flexible arm having a longitudinal axis which is substantially aligned with the extrusion grain of the cover, rim portion and flexible arm.

15. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Kenihan.

Melton as modified teaches the claimed cup lid except for the stiffening ribs around the periphery of the condiment opening.

Kenihan teaches a cup lid having stiffening ribs 24 around the periphery of the condiment opening 20.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of stiffening ribs around the periphery of the condiment opening of Melton. Doing so provides stiffening to the weakened area of the cover portion formed by the opening.

Election/Restrictions

16. This application contains claims directed to the following patentably distinct species of the claimed invention:

Group I drawn to a cup lid as illustrated in figures 1-4;

Group II drawn to a cup lid as illustrated in figure 5;

Group III drawn to a cup lid as illustrated in figure 6;

Group IV drawn to a cup lid as illustrated in figure 7; and

Group V drawn to a cup lid as illustrated in figure 8.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

18. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

19. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
March 18, 2005



Robin A. Hylton
Primary Examiner
GAU 3727